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No. 82-555

In the Supreme Court of the United States

OCTOBER TERM, 1982

JACK OSBORN WATSON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioners contend that the boarding of a vessel on the high seas by the Coast Guard for the purpose of inspecting the vessel's documents violates the Fourth Amendment because the boarding was made without a reasonable suspicion of a violation of law.

On December 17, 1981, petitioners were charged in a three-count indictment returned in the Southern District of California with conspiracy to possess marijuana on the high seas with intent to distribute, in violation of 21 U.S.C. (Supp. IV) 955a(a) and (c); possession of marijuana on the high seas with intent to distribute, in violation of 21 U.S.C. (Supp. IV) 955a(a); and conspiracy to import marijuana, in violation of 21 U.S.C. (& Supp. IV) 952, and 21 U.S.C. 960 and 963. Prior to trial, they moved to suppress evidence obtained in a warrantless search by the Coast Guard of a

40-foot sailing vessel on the high seas. The district court granted the motion, but the court of appeals reversed (Pet. App. 1-21).

Petitioners contend (Pet. 9-27) that the nightime stop and boarding of their vessel by the Coast Guard without reasonable suspicion violated the Fourth Amendment. Petitioners also contend (Pet. 27-36) that the Coast Guard illegally used its authority to conduct a boarding and search for documentation and safety purposes as a pretext for a search for marijuana and other contraband. Whatever the merits of petitioners' contentions, they are not ripe for review by this Court at the present time. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to suppress. If petitioners are acquitted following a trial on the merits or if the charges are dismissed on other grounds, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[1]

We note that in *United States* v. *Villamonte-Marquez*, cert. granted, No. 81-1350 (June 7, 1982), this Court has before it the question whether the statutory authority granted Customs officers to board vessels on *inland* waters for the purpose of inspecting the vessels' documents violates the Fourth Amendment where the boarding is made without a reasonable suspicion of a violation of law. However,

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[1]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

the Fifth Circuit's holding under review in *Villamonte-Marquez* is limited to boardings in inland waters. Suspicionless boardings on the high seas have been sustained by the Fifth Circuit. E.g., *United States* v. *Williams*, 617 F. 2d 1063, 1078 (1980) (en banc). Indeed, there is no conflict among the circuits on that issue, and this Court has consistently denied petitions presenting the issue presented here. *United States* v. *Green*, 671 F. 2d 46 (1st Cir. 1982), cert. denied, No. 81-2086 (June 21, 1982); *United States* v. *Harper*, 617 F. 2d 35 (4th Cir.), cert. denied, 449 U.S. 887 (1980); *United States* v. *Warren*, 578 F. 2d 1058, 1064-1066 (5th Cir. 1978) (en banc), cert. denied, 446 U.S. 956 (1980). Accordingly, while this Court's decision in *United States* v. *Villamonte-Marquez* may have some bearing on this case, it would not be appropriate to hold this petition pending the Court's consideration of *Villamonte-Marquez*. If the decision in *Villamonte-Marquez* casts any doubt upon the correctness of the decision below, petitioners can raise that claim in the district court or in a post-conviction appeal. There is thus no reason to hold this petition and further delay the trial in this case, in which the indictment was returned in December 1980, and in which trial has thus already been delayed nearly two years.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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